Regular migrants' integration between European law and national legal orders: a key condition for individual and social development

REGULAR MIGRANTS' INTEGRATION BETWEEN EUROPEAN LAW AND NATIONAL LEGAL ORDERS: A KEY CONDITION FOR INDIVIDUAL AND SOCIAL DEVELOPMENT

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1. – Introduction: the Strategic Importance of Regular Migrants' Integration in the EU

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Migration policies are often seen as "dramatic stories of consolidation of power", where opposing values and interests inevitably collide[1]. Consequently, the narratives of and on migration flows are often imbued with "political messianism"[2], which fosters a defensive and identitarian approach to the phenomenon[3]. A survey carried out in 2015 by Eurobarometer highlighted that, after a 14-point increase since autumn 2014[4], immigration has become the main concern in the Member States and candidate countries. It is perceived as far more alarming than terrorism, public order, public finances and the economic situation of the EU in general[5].

However, the hiatus 'we/the others' smoothes over the complexity of the challenges that the EU and its Member States are confronted with. While the public debate is pressed by the urgency of irregular migration and daily functioning of the common European asylum system, a long-term issue faces the Member States, namely social and economic integration of third country nationals regularly settled in Europe. More than 20 million regular third country nationals are estimated to reside in the Member States. That means 4% of the EU's overall population. In addition, statistics show a clear trend towards the increase and stabilisation of their presence[6]. This remark is mirrored by the fact that family reasons are the main vehicle for regular migration towards Europe. In 2014, they were the main grounds for issuing a residence permit in 18 Member States, whereas in 7 countries they accounted for more than 50% of all first permits issued[7]. Eurostat surveys also confirm that more than 7.5 million long-term residents are settled in the EU and that

[1] MCNAMARA, *The Politics of Everyday Europe: Constructing Authority in the European Union*, Oxford, 2015, p. 125.

[2] WEILER, "Deciphering the Political and Legal DNA of European Integration", in DICKSON and ELEFTHERIADIS (eds.), *Philosophical Foundations of European Union Law*, Oxford, 2012, p. 137.

[3] RODOTÀ, *Il diritto di avere diritti*, Roma-Bari, 2012, p. 4.

[4] Eurobarometer standard 81, spring 2014, available at: <http://http://ec.europa.eu/public_opinion/archives/eb/eb81/eb81_first_en.pdf>.

[5] Eurobarometer standard 83, spring 2015, available at: <http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_first_en.pdf>.

[6] Eurostat migration and migrant population statistics 2016, available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics>.

[7] Eurostat residence permit statistics, available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics>. 680,025 permits were issued for family reasons, while 572,414 and 476,817 were respectively grounded on paid work and study purposes. The statistics concerning the previous years confirm this trend.

their number steadily increases over time[8].

Even the recent massive inflow of international protection seekers raise concerns on the integration of individuals involved. On one hand, besides providing for their immediate needs, the Member States will be faced with the long term challenge of their social inclusion. In this perspective and in order to facilitate the integration process, the programmes on relocation of asylum seekers allow the States of relocation to express preferences on the applicants' qualifications and characteristics. Member States can take into account factors such as language skills or family, cultural and social ties, in order to maximise the beneficiaries of international protection seekers' chances of future social and economic inclusion[9]. On the other hand, recent measures on relocation and resettlement have unveiled the deficiencies and absence of comprehensive strategies in Member States with less experience of receiving migrants and related integration issues[10].

Integration strategies for regular migrants are, therefore, a common denominator within the various branches of migration policy. They are also essential to the full effectiveness of any policy initiative in this domain, at both EU and national levels[11]. The acts adopted by the EU in this field recognise that legal migration plays an important role in enhancing a knowledge-based economy in Europe, ad-

[8] See long-term residents statistics by citizenship on 31 December of each year, available at: <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_reslong&lang=en>. The number of long-term residents has continuously and gradually increased from 1,2 millions in 2008 to more than 7,5 in 2015.

[9] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L239 of 15 September 2015, p.146, recital 28; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 248 of 24 September 2015, p. 80, recital 34. However, some Member States have expressed long or constraining lists of preferences for the profile of the applicants to be relocated, thereby negatively affecting the system of relocation. See Commission's reports on relocation and resettlement: COM (2016) 165 final of 16 March 2016, COM (2016) 222 final of 12 April 2016 and COM(2016)360 final of 18 May 2016.

[10] Communication from the Commission COM(2016) 377 final of 7 June 2016, Action plan on the integration of third country nationals. The European Parliament has called for full participation and early integration of all third country nationals, including refugees as well: see European Parliament Resolution 2015/2095/INI of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration.

[11] It has been underlined that the core factors influencing integration policies are utility and security: CARMEL, "European Union migration governance: utility, security and integration", in CARMEL, CERAMI and PAPADOPOULOS (eds.), *Migration and welfare in the new Europe. Social protection and the challenges of integration*, Bristol, 2011, pp. 49-66.

vancing economic development[12]. In fact, integration exceeds the individual dimension and becomes a pre-condition for social inclusion and cohesion, a decisive factor for the economic development of host societies as a whole, especially in times of economic crisis and demographic decrease[13]. In this context, recent surveys concerning indicators of immigration integration show that third country nationals have greater difficulties than EU citizens in terms of access to education, employment and social inclusion outcomes such as decent housing[14]. Additionally, compared to host country nationals, they are more at risk of social exclusion and poverty, even when they are in employment[15].

As pointed out by the European Commission, a failure to release the potential of regular migrants "would represent a massive waste of resources", both for the individuals concerned and for the host societies[16]. Research demonstrates that investing in early integration in both the education system and labour market has significant social and economic impact, which ranges from easier access to essential services to a positive fiscal net contribution[17]. In the words of the Commission, integration policies can contribute to making Europe "a more prosperous, cohesive

[12] See for instance the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16 of 23 January 2004, p. 44, recital 4.

[13] PONZO et al., "Is the Economic Crisis in Southern Europe Turning into a Migrant Integration Crisis?", Politiche Sociali, 2015, p. 59. See also the Eurostat births and fertility statistics from 1961 to 2014, which confirm the negative trend of EU's population growth, available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Fertility_statistics>.

[14] See Eurostat migrants' integration statistics 2016, available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_-_overview> and the indicators of immigration integration 2015 developed by the Organization for Economic Cooperation and Development, available at: <http://www.oecd.org/els/mig/Indicators-of-Immigrant-Integration-2015.pdf>.

[15] In 2014, 49% of third-country nationals were at risk of poverty or social exclusion, compared with 22% among host-country nationals. 18.2 % of the young non-EU-born population faced severe material deprivation. Third country nationals were more likely to live in an overcrowded household than the native-born population.

[16] European Commission, Directorate General for Economic and Financial Affairs, Institutional Paper 33 of 26 July 2016, An Economic Take on the Refugee Crisis: A Macroeconomic Assessment of the EU, available at: <http:// http://ec.europa.eu/economy_finance/publications/eeip/pdf/ip033_en.pdf>.

[17] Organization for Economic Cooperation and Development, "The Fiscal Impact of Immigration in OECD Countries", in International Migration Outlook 2013, p. 125, available at: <http://www.globalmigrationgroup.org/sites/default/files/Liebig_and_Mo_2013.pdf>. See also KING and LULLE, Research on Migration. Facing Realities and Maximizing Opportunities. A Policy Review, European Commission Research and Innovation Paper of June 2016, available at: <https://ec.europa.eu/research/social-sciences/pdf/policy_reviews/ki-04-15-841_en_n.pdf >.

and inclusive society"[18]. Regular migrants' integration is seen as a two-ways process of accommodation, whereby both the third country nationals and host societies can benefit from the social and economic inclusion of incomers. Despite the absence of a clear definition of the concept of integration, a minimum common denominator is represented by the enhancement of the opportunities of removing material and immaterial barriers to access to labour market and essential public services in the host State. Such minimum goal is in fact a necessary pre-condition of the full enjoyment of fundamental individual rights and for a gradual increase of the - personal and collective - quality of life. This is precisely the meaning of integration this chapter builds upon, since the fulfillment of basic integration requirements can prove essential to foster social and economic development.

In the complex European scenario, EU and national integration policies are deeply intertwined but often lock swords and pursue different goals. The European legal order promotes a positive attitude towards integration issues, whereas the Member States often perceive them as 'managerial' tools for the selection of migrants deserving a chance. This background has favoured the gradual emergence of various forms of integration conditionality, both in national legislations and EU secondary law. Language and civic education exams, job training and residence conditions are the most common examples. At first sight, these measures are intended to endow the migrants with the necessary tools for a successful integration process. However, the failure to fulfill such integration requirements may result in a restriction of the rights provided by either EU or national law, such as family reunification or certain social assistance benefits. Therefore, the coherence of these conditions with the objective of facilitating regular migrant integration is often questionable, as well as their compatibility with the general principles of non-discrimination and proportionality.

In this context, this chapter analyses the European Union's approach to integration challenges regarding regular migrants and to integration conditionality, in particular. The next paragraph focuses on the role the EU is entitled to play in this domain and the objectives it pursues, in light of the vertical division of competences with the Member States. Paragraph 3 analyses European policy initiatives and soft-law instruments concerning integration requirements, while paragraph 4 considers hard-law conditionality measures and Court of Justice case-law concerning

[18] Communication COM(2016) 377 final *cit. supra*, note 10, p. 2.

their interpretation. Lastly, paragraph 5 analyses to what extent integration policies can be qualified as an overriding reason in the public interest, capable of justifying derogations from EU law.

The chapter supports the view that integration conditionality is an effective tool for fostering social cohesion and economic development. However, the resort to conditionality measures must be carefully assessed in light of the objectives pursued by the Treaties and EU legal order general principles. In fact, conditionality must not amount to a leeway allowing for forms of control over (and selection of) migration flows.

2. – Integration Policies and the Vertical Division of Competences: EU and Member States Locking Swords.

Migration policy is a domain of shared competence between the EU and the Member States. However, the EU has gradually expanded its influence over time, so that limited aspects of this field are now left to national sovereignty[19]. Integration policy can be listed among these sectors, since the Member States have always tried to maintain a prominent role. Even before the Maastricht Treaty, the Court of Justice ruled out any attempt by the Community to encroach on this Member States' secret garden. In *Germany and others v. Commission*[20], the Court acknowledged that EC labour and social policies could have a spillover effect on the legal regime of third country nationals, concerning their approach to the employment market and working conditions. However, it pointed out their "extremely tenuous" link with integration[21] and the Community was prevented from adopting any binding rule in this domain.

On the occasion of the 1997 Amsterdam reform of the Treaties, the Commission urged the States to endow the EC with greater powers. It deemed integration issues a necessary complement of the rising EC migration policy. The negotiations

[19] For instance, the granting and withdrawing of the national citizenship is left to the Member States. However, these competences have to be exercised paying due respect for the general principles of the EU legal order and ensuring the full effectiveness of the rights deriving from the EU citizenship, which the Court describes as the fundamental status of the individual in the EU. Case C-135/08, *Rottmann*, ECR, 2010, I-1449, paras. 43-46.

[20] Joined cases 281/85, 283/85, 285/85 and 287/85, *Germany and others v. Commission*, ECR, 1987, 3203, para. 22.

[21] See *Germany and others v. Commission* case, *cit. supra*, note 19, paras. 23 and 24.

apparently dismissed the Commission's expectations. In fact, Article 63(3) TEC limited the Community's competence on regular migration to the adoption of directives concerning the conditions of entry and residence in the Member States. However, paragraph (4) further provided that these measures could not "prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements". These nebulous clauses were soon subject to diverging interpretations. On one hand, they were considered wide enough to enable the EU to adopt secondary acts concerning social and economic integration of regular migrants. On the other hand, they were seen as keys locking the Member States' exclusive competence on integration policies[22].

The uncertainty caused by the "opposing driving forces underlying migration policy"[23] led to a solution of compromise. In light of these legal bases, the Community adopted a series of secondary acts concerning regular migration, which list third country nationals' integration into host societies among their main objectives[24]. Integration of third-country nationals regularly residing in the Member States is deemed a key element in promoting economic development and social cohesion, which are further fundamental objectives of the EU[25]. On the other hand, the States prevented the Community from adopting binding rules specifically and solely focused on integration policy. Since Article 63 TEC did not make any reference to this domain, any Community initiative would have breached the principle of conferral of competences.

The wording of the Treaty left many questions unanswered. Therefore, the Member States took the opportunity of the Lisbon Treaty negotiations to call for a more precise codification of the limits imposed to the intervention of the EU[26].

[22] GEDDES, *Immigration and European Integration. Beyond Fortress Europe?*, Manchester, 2008, p. 178.

[23] CORNELISSE, "What's wrong with Schengen? Border Disputes and the Nature of Integration in the Area without Internal Borders", CMLR, 2015, p. 741.

[24] See for instance Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251 of 3 October 2003, p. 251, recitals 3 and 4. This fundamental purpose has been acknowledged by the Court of Justice as well: case C-502/10, *Singh*, ECR, 2012, ECLI:EU:C:2012:636, para. 45.

[25] Art. 3 of the Treaty on the European Union.

[26] This trend also applies to other competences of the EU. The importance given to the principle of conferral of competences by the Member States during the negotiations of the Lisbon has been

Former Article 63 TEC underwent a significant reform and became Article 79 TFEU, which is currently the main legal basis for any European initiative concerning regular and irregular migration. Paragraph (4) now directly refers to integration, as it allows the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to "establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States"[27]. It follows that integration policy is an example of complementary competence, in light of Article 6 TFEU. This means that the EU is entitled to support, coordinate or supplement the actions of the Member States, but it can neither impose the direction of national policy choices nor modify existing national legislations[28].

Consequently, the Member States develop their own integration policies and the legal scenario is highly fragmented[29]. This is a major problem, since the challenge of integration exceeds national borders and is common to all Member States. Different approaches to a common concern can hamper the effectiveness of national policies. Moreover, as integration is one of the objectives of EU migration policy and is closely connected to further aims pursued by the Treaties, the full effectiveness of European law is at stake as well[30].

These are the reasons why, despite locking swords on the text of the relevant primary legal bases, Member States and the EU have committed themselves to developing coherent strategies on the subject. In 1999, the Tampere European Council led to the launch of the first multiannual programme on a comprehensive approach to the Area of Freedom, Security and Justice[31]. With a view to paving the

described as an "obsession". See ROSSI, "*Does the Lisbon Treaty Provide a Clearer Separation of Competences Between EU and Member States?*", *in BIONDI, EECKOUT and RIPLEY (eds.), The EU Law after Lisbon, Oxford, 2012, p. 85;* CRAIG, "Competence: Clarity, Conferral, Containment and Consideration", ELR, 2004, p. 333.

[27] Another Treaty provision of a certain - indirect but remarkable - importance for the integration of third country nationals is Art. 19(2) TFEU, according to which the European legislators can adopt measures to support national efforts to counter sex, racial, ethnical and religious discriminations.

[28] SCHÜTZE, *An Introduction to European Law*, Cambridge, 2012, p. 82.

[29] PAPADOPOULOS, "Immigration and the variety of migrant integration regimes in the European Union", in CARMEL, CERAMI and PAPADOPOULOS (eds.), *cit. supra* note 11, pp. 23-48.

[30] PORCHIA, "L'effettività del diritto dell'Unione tra tutela del singolo e salvaguardia dell'ordinamento", in LEANZA et al. (eds.), *Scritti in onore di Giuseppe Tesauro*, Napoli, 2014, p. 2311.

[31] Tampere European Council of 15-16 October 1999, Presidency Conclusions, SN 200/99.

way for a European policy on immigration and integration, the European Council identified four main priorities. The so-called Tampere milestones included: the extension of the scope of application the principle of equality to regular non-EU migrants; the development of a more vigorous integration policy for third country nationals; the establishment of a status as near as possible to EU citizenship for long-term residents; the approximation of national legislation concerning the conditions for admission and residence.

The programme received wide support across the political arena and civil society, but its implementation soon proved to be difficult, due to the opposition of some Member States[32]. In order to avoid intergovernmental stumbling blocks, a twofold strategy was agreed. First, the coordination of national integration policies would have been ensured by a series of soft-law instruments supervised by the Commission. In parallel, the Council was asked to adopt binding rules concerning the legal regime of regular migrants, taking the Tampere milestones into due account.

3. – Integration of Regular Migrants and EU Soft-Law and Policy Initiatives: Between Incentives and Conditionality

In 2002, the Justice and Home Affairs Council urged the national authorities to improve the exchange of information and identify best practices, thereby allowing for future cross-fertilisation of national legal orders. That spur represented the first step of an EU framework on integration, a comprehensive set of policy initiatives and soft-law instruments[33] coordinated and monitored by the Commission[34]. The first output was the establishment of a network of national contact points, tasked with the duties to promote information exchange and disseminate best practices[35].

[32] Reservations on the outcomes of the Tampere Programme were limited to the undemocratic nature of the related decision-making processes, which were to a large extent inspired by an intergovernmental approach. See BUNYAN, "The Story of Tampere: an Undemocratic Process Excluding Civil Society", available at: <http://www.statewatch.org/news/2008/aug/tampere.pdf>.

[33] Scholars have highlighted the innovative model of governance the framework is based on. It has been described as a quasi-Open Method of Coordination. CARRERA, "Integration of Immigrants in EU Law and Policy: Challenges to Rule of Law, Exceptions to Inclusion", in AZOULAI and DE VRIES (eds.), *EU Migration Law. Legal Complexities and Political Rationale*, Oxford, 2014, p. 161.

[34] PAPAGIANNI, *Institutional and Policy Dynamics of EU Migration Law*, Leiden-Boston, 2006, pp. 176-180.

[35] The meetings of the network are chaired by the Commission and national representatives are selected by each Member State, including UK, Denmark and Ireland. Norway participates in the capacity of

The discussion platform for EU integration policies has been widely criticized, due to the lack of a true political commitment on the part of the Member States[36]. Civil society organizations have represented the silent engine of the network, so far. In particular, they have played a key role in the preparation and drafting of the Handbook on integration for policy makers and practitioners[37]. The Handbook gathers studies, best practices and national legal solutions to the challenge of integrating third country nationals. In the same vein, the Commission has set up a European integration forum and a European website on integration, both aimed at strengthening the network between the various actors, such as civil society organisations, national experts, ministries and NGOs[38].

The 2004 Hague Program, the second multiannual program for the AFSJ, called for a clearer definition of the principles guiding the European agenda on integration. In response to this request, the JHA Council of 19 November 2004 unanimously adopted the Common Basic Principles for Immigrant Integration Policy[39], non-binding guidelines intended to orient Member States policies[40]. According to the Basic Principles, integration is a two-way process of accommodation, which requires the engagement of both the host society and the migrant. Education and employment are among the key aspects of the integration process, as they make the migrants' contribution to the host society visible and facilitate access to public institutions and interaction with EU citizens. The Basic Principles also pay close attention to conditionality of integration, as a means of facilitating social inclusion.

observer.

[36] BLOCK and BONJOUR, "Fortress Europe or Europe of rights? The Europeanisation of family integration policies in France, Germany and the Netherlands", European Journal of Migration and Law, 2013, pp. 203-224.

[37] European Commission, Directorate General Justice, Freedom and Security, Handbook on Integration for Policy-Makers and Practitioners, available at: <http://ec.europa.eu/dgs/home-affairs/e-library/docs/handbook_integration/docl_12892_168517401_en.pdf>.

[38] The website on integration is https://ec.europa.eu/migrant-integration.

[39] The text of the Principles is available at: <http://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf>.

[40] It is important to remark that the EU has also planned specific financial support in favour of national integration policies. See for instance Council Decision 2007/435/EC of 25 June 2007, establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the general programme "Solidarity and management of migration flows", OJ L 168 of 28 June 2007, p. 18. See also the Commission's Communication COM(2011) 847 final of 5 December 2011 on the results achieved and on qualitative and quantitative aspects of implementation of the European Fund for the Integration of third-country nationals for the period 2007-2009.

In fact, Principle 2 points out that integration implies respecting the EU's basic values[41]. Moreover, Principle 4 clarifies that "basic knowledge of the host society's language, history, and institutions is indispensable to integration" and that "enabling immigrants to acquire this basic knowledge is essential to successful integration"[42]. In particular, according to Principle 9, this basic knowledge allows migrants to take an active part in the democratic and decision-making processes at local level, thereby influencing the direction of integration policies[43].

Conditionality of integration is, therefore, a major concern in the process of mutual accommodation, as it is intended to provide migrants with the necessary tools for easier interaction in the host society. Its importance was confirmed by the first integration agenda of 2005[44], where the Commission acknowledged that integration conditionality takes various shapes at national level and is often represented by language and civic education exams. From this point of view, the agenda emphasised two innovative aspects. First, the Commission underlined the essential role of the host country, required to make every necessary effort to encourage and support the third country nationals' integration. In particular, national authorities were urged to arrange and disseminate training materials and organise language and civic education courses, even in the migrants' countries of origin, so as to fill the 'knowledge divide' that migrants often suffer from. Secondly, and interestingly, the Commission highlighted that civic integration exams should also include questions on the foundations of the European Union and the integration process.

The 2009-2014 Stockholm Program once again listed integration among the priorities of EU migration policy, with a view to strengthening the chances of social inclusion of regular migrants and enhance public security[45]. In this context, the

[41] This is particularly interesting, since Art. 2 TEU clarifies the main values the EU is founded on: the process of integration must take into due account the values shared by the Member States at European level.

[42] The Basic Principles also build on the Presidency Conclusions of the Thessaloniki European Council of 19 and 20 June 2003. See in particular para. 28: "The European Council deems it necessary to elaborate a comprehensive and multidimensional policy on the integration of legally residing third country nationals who, according to and in order to implement the conclusions of the European Council of Tampere, should be granted rights and obligations comparable to those of EU citizens".

[43] BONJOUR and VINK, "When Europeanisation backfires: the normalisation of European migration policies", Acta Politica, 2013, pp. 389-407.

[44] Communication from the Commission COM(2005) 389 final of 1 September 2005, a common agenda for integration. Framework for the integration of third-country nationals in the European Union.

[45] Council of the European Union, Stockholm Programme of 3 March 2010, an open and secure Eu-

Commission proposed the preparation of European modules for migrant integration, a set of "building blocks" which Member States may draw upon when planning their own integration policies[46]. In fact, the modules collect experiences at national level and identify joint practices on the main aspects of the integration process. They provide national authorities with quality standards and negotiated recommendations based on existing evidence of the best approaches. From this point of view, specific attention is paid to the indicators, targets and best practices concerning language or civic education courses and exams. In fact, Module 1 stresses that basic knowledge of the receiving society's language, history and institutions is indispensable to integration[47].

Lastly, following the current massive inflows of migrants and the challenges brought by resettlement of refugee programmes, the Commission has recently issued a new action plan concerning the integration of third country nationals[48]. Since providing support to migrants at the earliest stage possible paves the way for successful integration, the Commission calls for increased attention for pre-departure and pre-arrival measures, involving both migrants and receiving societies. In this vein, language and job-related training are deemed a priority, as they facilitate access to better job opportunities. Moreover, the action plan underlines the long-term benefits for both migrants and receiving societies of the acquisition of language skills, which enhances migrants' autonomy in contemporary complex societies[49]. In the Commission's view, investments on early integration measures are a powerful lever with a positive impact in the long run, in terms of increased social cohesion and economic development.

rope serving and protecting citizens.

[46] The final report was published in April 2014 and is available at:<https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuid=FC5F04DC-E798-1B57-7A5A978B8370D5AF>.

[47] The final report on the modules was adopted on 3 April 2014 and can be downloaded via the EU website on integration: https://ec.europa.eu/migrant-integration/librarydoc/european-modules-on-migrant-integration---final-report, accessed 9 October, 2015.

[48] Communication COM(2016) 377 final *cit. supra*, note 10.

[49] This reflects the sociological theories on the daily challenges that the members of modern and complex societies are confronted with, in terms of democratic participation, awareness of rights and duties, knowledge of the functioning of a social system. The migrants themselves contribute to increase the complexity of host societies. GSIR, "Social Interactions between Immigrants and Host Country Populations: a Country of Origin Perspective", INTERACT Research Report 2014/2, available at: <http://cadmus.eui.eu/bitstream/handle/1814/31243/INTERACT_RR_2014_02.pdf?sequence=1>.

4. – Integration Conditionality in EU Secondary Law: Fostering Social Cohesion or Immigration Control?

4.1. The Objectives of EU Secondary Law on Regular Migration and the Clauses on Integration Conditionality.

The second aspect of the strategy designed by the Tampere Programme was focused on the adoption of common rules regarding the legal regime of regular migrants. The implementation of the Tampere political mandate encountered many obstacles, as the lack of political will was coupled by the need to reach unanimity within the Council. In particular, due to the opposition of some Member States, the Commission was forced to withdraw its 2001 proposal for a Directive on the conditions of entry and residence for paid and self-employed migrant workers[50]. Other proposed Directives also underwent exhausting negotiations[51]. The efforts made led to the adoption of a set of important secondary acts on various categories of regular migrants, such as Directive 2003/109/EC on long-term residents, Directive 2003/86/EC on family reunification, Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service and Directive 2009/50/EC on highly-qualified employment.

As a whole, these acts acknowledge the strategic importance of regular migration for the social and economic development of the EU and share the objective of helping them settle in the EU. Directive 2003/109/EC also provides that long-term residents should enjoy equality of treatment with Member State citizens in a wide range of economic and social matters, as "a genuine instrument for integration"[52]. Accordingly, Directive 2003/86/EC states that family reunification "helps to create sociocultural stability", facilitating the integration of third country nationals and thereby promoting economic and social cohesion[53].

[50] Communication from the Commission COM(2001)386 final of 11 July 2001 concerning a proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities.

[51] For instance, Directive 2003/109/EC on long-term residents and Directive 2003/86/EC on family reunification were eventually adopted after respectively five and four years of harsh and non-transparent debates within the Council.

[52] Directive 2003/109/EC, *cit. supra*, note 11, recital 12. See also case 571/10, *Kamberaj*, ECR, ECLI:EU:C:2012:233.

[53] See in particular recital 4.

The wording of these Directives, however, reflects the Member States' primary role in integration policies. In fact, besides general clauses on their objectives, they address integration of regular migrants from the perspective of conditionality. Following a joint proposal put forward by Germany, Austria and The Netherlands, they include provisions allowing Member States to impose a duty of integration on migrants. In light of Article 5(2) of the long-term residents Directive, Member States may require third-country nationals to comply with "integration conditions", in accordance with national law. Likewise, Article 15, concerning the conditions for residence in another Member State, allows national authorities to require them to comply with integration measures. These further requirements are not necessary if the migrants have already complied with integration conditions under Article 5(2) in another Member State. In the same vein, Article 7(2) of the 2003/86/EC Directive stipulates that Member States may require third country nationals wanting to exercise their right to family reunification to comply with integration measures, in accordance with national law[54]. A specific regime is awarded to refugees, beneficiaries of subsidiary protection[55] and their family members, to whom integration measures may only be applied once the person concerned has been granted family reunification[56]. The same favourable condition for family reunification applies to family members of highly-qualified migrants and migrants residing in the EU in the framework of intra-corporate transfers[57].

4.2. – Integration Conditions and Measures: the Risk of Deviating from the Ob-

[54] Another provision has to mentioned, for the sake of completeness: Art. 4, in fact, states that "where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorizing entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation at the date of the implementation of this Directive". This provision has lost its importance, since it merely allowed Member States to introduce this exception until the expiration of the deadline for the implementation of the Directive. Not a single Member State implemented this provision, which has then to be considered *a contrario* an express prohibition to impose integration conditions to minors.

[55] In light of Art. 33 of Directive 2011/95, beneficiaries of subsidiary protection should in principle benefit from the same regime as refugees.

[56] See Art. 7(2), last sentence, of Directive 2003/86/EC.

[57] See respectively Art. 15(3) of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, in OJ L 155 of 18 June 2009, p. 17, and Art. 19(3) of the Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, in OJ L 157 of 27 May 2014, p. 1.

jective of Facilitating Integration.

The Directives introduce a *summa divisio* between conditions and measures of integration. At first sight, such conditions and measures seem to be intended to assess migrants' capability or willingness to comply with pre-determined integration standards. However, a deeper analysis of the legal implications of a failure to fulfill the requirements is needed. In particular, it has to be clarified whether such failure could restrict the rights conferred by EU law, precluding family reunification or the acquisition of the status of long-term residents. Such consequences would be regrettable, because one of the main purposes of the Directives under consideration is to reinforce regular migrants' chances of social and economic integration. Since these forms of conditionality can result in a stumbling block to integration, they can deprive the Directives of their effectiveness. At the same time, this is a domain of exclusive national competence. Even though Member States are required to respect the general principles of the EU legal order, they are also entitled to follow their own objectives and political priorities.

Scholars have warned of the risks of unilateral deviations of integration policies that are of exclusive benefit to the Member States[58]. In fact, according to part of legal literature, this normative approach highlights an evident shift in the notion of integration[59]. In the 1970s, the promotion of social and economic inclusion was conceived as a means to enhance mobility through the Member States. The guarantee of equal treatment in the host State, the respect of the right to family life and stringent limits to repatriation were intended to boost social inclusion. Integration in turn ensured the effectiveness of the free movement of persons, which is an essential component of the internal market and one of the Treaties' primary objectives. It was therefore conceived in a positive - and not 'impositive' - perspective, since it represented the natural complement to the legal regime provided for EU workers, later on extended to all EU citizens.

Integration clauses provided by EU secondary law on regular migration serve the opposite purpose, which is to allow Member States to maintain a certain margin

[58] CAGGIANO, "L'integrazione dei migranti fra *soft-law* e atti legislativi: competenze dell'Unione europea e politiche nazionali", in ID. (ed.), *I percorsi giuridici per l'integrazione. Migranti e titolari di protezione internazionale tra diritto dell'Unione e ordinamento italiano*, Torino, 2015, p. 38.

[59] CARRERA, *In Search of the Perfect Citizen? The Intersection between Immigration, Integration and Citizenship in the EU*, Leiden-Boston, 2009, pp. 166-195.

of control over migration flows[60]. From this point of view, one of their main objectives is to enable forms of selection of third country nationals, based on the assessment of their chances of integration in the host society[61]. The Member States' unconcealed ambitions of control and security show the identitarian side of integration measures and conditions[62] and the risk of "managerial effects"[63] on incoming regular migrants.

These concerns are further fuelled by the fact that none of the Directives in question provides a clear definition of the concepts of integration conditions and measures. Wide and fuzzy notions amplify the national authorities' discretionary powers and the heterogeneity of internal implementation laws, to the detriment of a coherent approach to integration policies[64]. This is why the Commission, through the afore-mentioned soft-law instruments, has tried to orient Member States' initiatives on this subject.

4.3. Meaning and Implications of Integration Conditions and Measures.

Scholars have proposed a wide range of interpretations of the integration clauses. According to a minority opinion, they merely confirm the vertical distribution of powers between the EU and Member States. Consequently, they are pleonastic and devoid of effects[65]. However, this approach does not take into account that EU secondary law has to be read in accordance with the *effet utile* doctrine[66]. Moreover, national laws implementing the clauses must be carefully scrutinised in light of the general principles of the EU legal order[67], so as to avoid undue deviations from EU

[60] CARRERA, "Integration of Immigrants in EU Law and Policy: Challenges to the Rule of Law, Exceptions to Inclusion", in AZOULAI and DE VRIES (eds.), *EU Immigration Law. Legal Complexities and Political Rationale*, Oxford, 2014, p. 154.

[61] JESSE, "Integration Measures, Integration Exams and Immigration Control: *P and S* and *K and A*", CMLR, 2016, 1065.

[62] JOPPKE and MORAWSKA (eds.), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States*, Basingstoke, 2003; BAUBÖCK et al. (eds.), *Acquisition and Loss of Nationality: Polices and Trends in 15 European Countries*, Amsterdam, 2006.

[63] KOSTAKOPOULOU, CARRERA and JESSE, "Doing and Deserving: Competing Frames of Integration in the EU", in GUILD, GROENENDIJK and CARRERA (eds.), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Burlington, 2009, p. 167.

[64] See in general KRÁL, "On the Choice of Method of Transposition of EU Directives", ELR, 2016, p. 220.

[65] CAGGIANO, *cit. supra*, note 54, p. 54.

[66] See for instance case C-329/11, *Achughbabian*, ECR, 2011, ECLI:EU:C:2011:807, para. 33.

[67] Case C-438/05, *Finnish Seamen's Union v. Viking*, ECR, 2007, ECLI:EU:C:2007:772.

law objectives.

A second view builds on the dividing line between conditions and measures[68]. Only conditions are deemed to introduce compulsory criteria, so a failure to comply with them can preclude enjoying the rights conferred by the Directives. It also entitles national authorities to exercise their sanctioning powers, for instance by imposing a pecuniary sanction on the migrant concerned. Integration measures however would represent an incentive for the migrants' direct and active involvement in their social integration process. As such, neither binding obligations stem from them, nor the Member States could sanction their violation.

The meaning of integration conditions and measures became a matter of analysis for Advocates General and the Court of Justice in a series of cases concerning the compatibility of certain national integration exams with EU law. According to Advocate General Szpunar in *P and S*, integration measures are not additional mandatory criteria imposed on third country nationals, but tools to enhance their chances of integration[69]. Nevertheless, this does not exclude the possibility of imposing a penalty in the form of a fine on a person who "persistently refuses to fulfill the obligations imposed […] as part of integration measures"[70]. In his opinion in *Dogan*[71], Advocate General Mengozzi upheld this approach, although reaching different conclusions. The *summa divisio* between conditions and measures is formally correct, but has no practical effects, since the latter notion is broad enough to encompass "obligations to reach a result"[72]. Lastly, in *K and A*[73], Advocate General Kokott expressed the view that the words condition under Article 5 of Directive 2003/109/EC and measure provided in Article 7 of Directive 2003/86/EC actually

[68] GROENENDIJK, "Legal Concepts of Integration in EU Migration Law", European Journal of Migration and Law, 2004, p. 111. The author underlines that conditionality has turned the rationale of integration upside down. Rights are not tools for integration, rather rewards for the fulfillment of integration conditions and measures.

[69] Case C-579/13, *P and S*, ECR, 2015, ECLI:EU:C:2015:369.

[70] Case *P and S*, para. 104. In any case, these sanctions must be proportional to the offence and also take account of the reasons why such action is considered undesirable.

[71] Case C-138/13, *Dogan*, ECR, 2014, ECLI:EU:C:2014:2066.

[72] Case *Dogan*, para. 56. The Advocate General refers to Art. 7(2) of the Directive 2003/86/EC, but his reasoning appears to apply to the notion of integration measure *per se*. The Court found that there was no need to answer to the preliminary questions directly regarding the compatibility with this Directive of integration tests imposed in Germany. For a note on the judgment see BRIBOSIA and GANTY, "Arrêt *Dogan*: quelle légalité pour les tests d'intégration civique?", Journal de droit européen, 2014, p. 378.

[73] Case C-153/14, *K and A*, ECR, 2015, ECLI:EU:C:2015:453.

share the same meaning. In fact, the distinction between the two concepts in Directive 2003/109/EC is due to the fact that the migrants involved can move freely within the EU. Then, it only aims at ensuring that long-term residents, who have already satisfied an integration condition in one Member State, are not required to take further integration tests in another Member State. The family reunification Directive concerns first entry of family members into the EU and the measures are listed among the requirements for family reunification. The Member States are entitled to verify whether these criteria for the exercise of the right to family reunification have been satisfactorily complied with. According to Advocate General Kokott, this means that the notion of measure, for the purposes of the 2003/86/EC Directive, has to be interpreted autonomously and is close to the concept of condition provided by Article 5 of Directive 2003/109/EC. Consequently, it allows national authorities to impose compulsory integration requirements as a pre-condition for family reunification. It follows, as a rule, that the migrant can be required to fulfill an integration measure in advance, before entry into the territory of the host Member State. This is confirmed by reading *a contrario* Article 7(2), which rules out integration prior to family reunification only for refugees. In practice, the destination Member State can make family reunification dependent upon the fulfillment of certain requirements, such as the successful completion of language and civic education exams, which the migrant can be required to take in the country of origin[74].

4.4. – The Court of Justice and the Criteria for the Compatibility of Integration Conditions and Measures with EU Law.

Placed between autonomous interpretation and the Directives' objective of fostering inclusion, the notions of condition and measure of integration can have a significantly adverse impact on the individuals concerned. Therefore, the Court of Justice has been asked to strike a balance between the restrictions to the rights conferred by the Directives and the need to support a positive attitude towards integration policies.

[74] According to some authors, this is not only due to the wording of Art. 79(4) TFEU. National civic integration exams could be considered a specific implication of the protection of national identities, enshrined in Art. 4(2) TEU. ORGAD, *The Cultural Defence of Nations. A Liberal Theory of Majority Rights*, Oxford, 2015, p. 3.

In its recent case-law, the Court has endorsed the view expressed by Advocate General Kokott: the conditions under Article 5 of 2003/109/EC Directive and the measures mentioned in Article 7 of the family reunification Directive have similar meanings and effects. Both clauses actually permit the Member States to require third country nationals to comply with integration criteria imposed by national laws[75]. This applies in particular to integration tests. According to the Court, acquiring basic knowledge of the language and social organisation is "undeniably useful for establishing connections with the host Member State"[76]. It facilitates relations with the host Member State's nationals and encourages the development of social networks, whereby favouring access to vocational training opportunities and ~~to~~ the labour market[77]. Therefore, the Directives allow national authorities to make the issue of a long-term residence or entry permit for family reunification contingent upon the fulfillment of predetermined integration criteria.

However, the discretionary powers reserved to national authorities is not unlimited. The Court has underlined elsewhere that, as a general rule, the exercise of national competences cannot obstruct the effectiveness of the EU regime on regular migration[78]. Therefore, the conditions and measures of integration are compatible with EU law only if they contribute to enhancing the chances of integration of third country nationals permanently settled in Europe. Their content, nature and practical implementation have to be oriented to this fundamental concern.

It follows that national laws implementing the Directives must primarily tend to the issue of the long-term resident permit and the authorisation of family reunification. Any deviations from this major objective, including those deriving from a

[75] This statement draws a dividing line between the EU citizens' regime for the issue of a permanent residence permit and the rules on the long-term residence permit. According to the case law of the Court, the former cannot be subject to integration requirements, while the latter can be conditioned. From this point of view, therefore, long-term residents are not granted the same treatment as EU citizens. Joined cases C-424/10 and C-425/10, *Ziolkowski and Szeja*, ECR, 2011, I-14035.

[76] Case *K and A*, para. 54.

[77] The Court of Justice uses the concept of integration of a person in a host Member States in various subjects, trying to follow a coherent approach. See for instance the case-law concerning the execution of a European arrest warrant, namely case C-42/11, *Lopes da Silva*, ECR, 2012, ECLI:EU:C:2012:517, para. 58, where the Court lists family, economic and social connections among the criteria for assessing the degree of integration of an individual.

[78] Case C-578/08, *Chakroun*, ECR, 2010, I-1839, para. 43. The judgment refers to the family reunification Directive, but the reasoning of the Court can be extended to the whole domain of regular migration.

failure to fulfill integration conditions or measures, must be interpreted narrowly and strictly.

Second, integration requirements must comply with the principle of proportionality. It means that they must be limited to what is strictly necessary and adequate in light of the objective of facilitating the start of a long integration process. As far as integration exams are concerned, the tests cannot be too selective, as they must only verify the basics of the language and civic education of the host country. This is particularly important in the event of pre-departure exams, which the Court considers *per se* compatible with EU law. In such cases, which primarily affect migrants seeking family reunification, the proportionality test on exam contents and the methods used to evaluate the third country nationals' knowledge should be particularly stringent. It is in fact almost contradictory to require migrants to fulfill an integration requirement before they arrive in the host society[79]. A contradiction that the UN Committee on the Elimination of Racial Discrimination has recently criticised, in a report focused on the Dutch integration policy[80]. A similar concern was expressed by the Committee of the European Social Charter, according to which the German legal order unduly obstructs family reunification - and therefore breaches Article 19(6) of the Charter of Fundamental Rights of the EU - by making reunification conditional upon documented evidence of sufficient German linguistic skills[81].

Third, integration requirements cannot be absolute. A failure to pass a test cannot automatically prevent the enjoyment of the rights conferred by the EU legal order, especially where the migrants have made every effort to achieve this objective. By the same token, the fulfillment of integration criteria must be assessed on a case-by-case basis, taking into due account the case's circumstances and each migrant's personal situation[82]. Consequently, national legislations must include ex-

[79] The need for a stricter proportionality test also derives from the fact that at the time the Directive 2003/86/EC was adopted and implemented at national level the Charter of Fundamental Rights of the EU had no binding value, while nowadays its provisions - and in particular Art. 7 on the right to family life - are to be considered EU primary law.

[80] Report of the UN Committee on the Elimination of Racial Discrimination, Sixty-Fifth Session, 31 October 2013, Supplement No. 18 (A/65/18).

[81] European Social Charter Committee Report, 13 February 2013, Concerning Conclusions XIX-4 (2011) of the 1961 European Social Charter.

[82] The individual approach is also urged, for instance, by Art. 17 of the family reunification Directive.

emptions from the duty of integration - the so-called hardship clauses - where the migrant's situation makes complying with these requirements either impossible or excessively difficult[83]. From this point of view, Member States have to take into consideration factors such as mental or physical disabilities, severe diseases, education and training levels, illiteracy, different cultural background of the third country of origin, age.

Conversely, the Member States must make any necessary effort to guide migrants towards successful completion of their integration process. Therefore, the case law of the Court confirms that national authorities have to arrange preparatory courses and materials, including in the migrant's mother tongue. These training opportunities and the examinations themselves must also be easily accessible, in practical and financial terms. For instance, the Court has censored the courses and examination fees in The Netherlands as they were considered to be an excessive obstacle to the enjoyment of the rights provided by Directives 2003/109/EC and 2003/86/EC[84].

5. – Integration Policies as an Overriding Reason in the Public Interest Justifying Derogations from EU Law.

As seen in the previous paragraphs, integration conditionality measures included in EU secondary acts are comparable to Trojan horses through which the Member States have tried to preserve wide margins of discretion and control on regular migration. However, they are not the unique source of limits to the rights granted by EU law. In fact, since integration policy falls under the competence the Member States, national authorities are entitled to introduce forms of integration conditionality additional to those referred to in EU secondary law.

From a negative perspective, they can make the enjoyment of a certain right

[83] Case C-155/11 PPU, *Imran*, ECR, 2011, I-5095.

[84] It is worth underlining that in the P and s judgment also the financial sanction imposed to the third country nationals concerned was considered manifestly disproportionate. Its amount was considered an excessive burden placed on the migrants and an obstacle to the successful completion of the test. From this point of view, the Court has built on its case law on the costs for the issue of resident permits for third country nationals. It had in fact already found excessive amounts to be evidently disproportioned if compared to the burdens imposed to EU citizens for the issue of similar documents. Case C-508/10, *Commission v. The Netherlands*, ECR, 2012, ECLI:EU:C:2012:243. It has to be pointed out that, in the aftermath of the judgment in *K and A*, the Dutch Government has considerably lowered down the fees for integration exams and reparation materials.

conditional upon fulfilling a certain integration requirement. In such cases, measures and conditions facilitating integration are only means to pursuing further goals, such as an effective organisation of the welfare system or rationalisation of managing public finances. From a positive point of view, Member States can also justify a derogation from EU law with the need to enhance the chances of integration of regular migrants residing there. Integration becomes the main objective of national policy choices, on the basis of which a Member State can even try to justify a deviation from the obligations imposed by the European legal order. Practices at national and local levels cover a wide range of situations, including residence conditions, a stay of a certain duration or demonstration of close personal ties. Whatever the case, integration conditionality once again exceeds the merely individual dimension and can have a remarkable systemic impact at social and legal levels.

In this respect, the Court of Justice has recently acknowledged that the objective of ensuring successful integration of third-country nationals in a Member State may constitute an overriding reason in the public interest[85]. This is a duty that the Court has paid to the vertical division of competences between the European Union and Member States. In fact, it implies that national authorities can expect to invoke the achievement of such objective as a justification of a failure to comply with EU law. Of course, they have to respect the general principles of the EU legal order and their conduct must be proportionate and suitable to the objective pursued[86]. However, this is further demonstration of the influence of integration conditionality on the effectiveness of migration policy as a whole. In fact, the Court provides national authorities with incentives to resort to such fundamental aims not only as a source of duties to migrants, but also and as a way out of obligations stemming from the European legal order.

For this reason, the Court has once again tried to set out appropriate boundaries to the Member States' discretionary power. In *Alo and Osso*[87], for instance, the Court was asked to establish whether a residence condition imposed by a German law on beneficiaries of subsidiary protection recipients of social assistance is com-

[85] Case C-561/14, *Genc*, ECR,2016, ECLI:EU:C:2016:247, paras. 55 and 56.
[86] In general, case 120/78, *Rewe Zentral* (*Cassis de Dijon*), ECR, 1979, 649.
[87] Joined cases C-443/14 and C-444/14, *Alo and Osso*, ECR, 2016, ECLI:EU:C:2016:127.

patible with Directive 2011/95/EU[88]. Theoretically, the imposition of a condition of residence amounts to a violation of the freedom of movement. The freedom to choose one's place of residence is in fact a corollary of a fundamental pillar of the EU legal order[89], which is in turn an indispensable condition for the free development of a person[90]. From this point of view, the Court stressed the importance of the principle of equality[91]. As a matter of fact, in light of Article 33 of the Directive, beneficiaries of subsidiary protection cannot in principle be subject to more restrictive rules than those applicable to refugees and other categories of regular migrants. If the situation of a beneficiary of subsidiary protection is objectively comparable to that of other legally resident third country nationals, as the objective of a full integration is concerned, the Member State must ensure the same treatment. Otherwise, a residence condition represents *per se* a justified restriction to the freedom of movement, as long as it is justified by the need to facilitate social inclusion in the host Member State.

As for integration exams, national judicial authorities are entrusted with a key role. In fact, the Court of Justice calls for a case-by-case assessment, in light of each migrant's individual situation. It is then for national courts to determine whether a refugee or beneficiary of subsidiary protection faces greater difficulties than other regular migrants concerning the successful completion of the integration process. Bearing in mind the recent massive inflows of international protection seekers, the Court's finding is even more important and contributes to making the national authorities' task more difficult.

However, the Court of Justice assesses the compatibility of the residence condi-

[88] Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337 of 20 December 2011, p. 9.

[89] See, on the specific implications of the notion of freedom of movement under Art. 33 of Directive 2011/95/EU, Opinion of Advocate General in *Alo and Osso* cases, cit. supra, note 80, paras. 49-53. See also Art. 26 of the Geneva Convention on status of refugees of 28 July 1951, in light of which the freedom of movement includes the right to choose the place of residence in the State that has granted that protection.

[90] United Nations Human Rights Committee, General Comment 27 of 2November 1999 on Freedom of Movement, Article 12, CCPR/C/21/Rev.1/Add.9.

[91] In fact, Directive 2011/95/EU has to a large extent removed the differences between the rights conferred to refugees and beneficiaries of subsidiary protection. See the Advocate General Bot's opinion in case C-562/13, *Abdida*, ECR, 2014, EU:C:2014:2167.

tion only on the basis of the principle of equality, but fails to provide the referring court with any guidance on the criteria for the (strict) proportionality test. From this point of view, the Court departs from its precedents on integration exams, where it has repeatedly underlined the close link between the respect of the principle of proportionality and the achievement of the objectives pursued by EU secondary law on regular migration. There, it provided something more than a mere guidance for national judges, since it listed a set of strict and "tangible" criteria that such integration conditions and measures have to meet. A similar approach would help national courts to better identify the limits of national integration policies, in light of the full effectiveness of EU migration law. In fact, factors such as the social and economic context of the area involved or the duration and territorial scope of the residence condition can have a significant impact on migrants' freedom of movement. Consequently, they inevitably influence the balance between the objective of ensuring the successful integration of third-country nationals -along with the protection of the rights conferred by the EU legal order - and the exercise of national exclusive competences.

6. – Concluding Remarks.

The analysis highlights a certain degree of inconsistency between visions of integration policies and reality. EU institution statements, their programmes and action plans uphold a positive approach to such long-term challenges. EU soft-law instruments overtly reflect such attitude and strive for the Europeanisation *de facto* of the domain. Common problems would need common - or at least coordinated - solutions.

However, integration conditionality provisions introduced in EU secondary legislation after fierce lobbying by the Member States protect national prerogatives and expectations of control on regular migration flows. In fact, they allow for restrictions of the rights conferred by the EU legal order, running counter to the objective of facilitating integration.

Article 79(4) TFEU also refers to promoting integration of third-country nationals in the host Member States as an action by the Member States to be encouraged and supported. On one hand, this reflects the EU's complementary role in this domain. On the other, integration is a key factor in promoting social and economic cohesion, as well as being a fundamental European Union objective set out in the Treaties. Consequently, the objective of achieving successful integration can con-

stitute an overriding reason in the public interest, justifying derogations from EU law at national level.

Such twofold divide between policy objectives and legal realism can obstruct the effectiveness of EU law, as integration is deeply intertwined with several aspects of European migration policy. The recent massive inflows of international protection seekers further amplify such concern. They urge the EU and Member States to address the challenge of rapidly involving them in the education system and/or labour market, as a powerful lever for their long-term social inclusion.

In fact, the link between the successful completion of the integration process and other EU objectives, in particular social cohesion and economic development, is close and clearly confirmed by EU soft and hard law. Being conscious of such challenges, the Court of Justice has tried to bring back integration conditionality to its foremost objective and align it with EU law general principles and the Charter of fundamental rights of the EU. Integration conditions and measures are in fact compatible with EU law only if they facilitate integration[92]. They also have to pass a strict proportionality test and must not undermine the effectiveness of relevant EU Directives. In both cases, the assessment must be individualised, taking into due account the applicant's situation and avoiding automatic restrictions to the rights conferred by EU law.

Consequently, the Court has placed severe limits on Member States concerning abuse of integration conditionality. In principle, they cannot resort to selective integration requirements as a means of migration control anymore. However, it remains to see how national authorities will react, especially in times of massive migration inflows and related widespread concerns among EU citizens. In such a context, policy choices on immigration are an emblem of national sovereignty and the Member States' ambitions of security and control. Sovereignty however suffers under the pressure of truly European challenges, which require limited national discretionary power and increased coordination and coherence.

ABSTRACT

Regular Migrants' Integration between European Law and National Legal Orders: a Key Condition for Individual and Social Development

[92] See for instance case *K and A*, cit. supra, note 69, paras. 52 and 57.

The chapter analyses the relationship between regular migrants' integration and economic and social development, in light of EU migration law and policies. A specific attention is paid to integration conditions, which is aimed at providing the migrants tools necessary to be actively in the economic and political life of the hosting Member State. Both EU secondary law and national legislations provide for various forms of integration conditionality. The failure to fulfill the integration requirements imposed at national level may result in a restriction of the rights provided by EU law. However, such conditions must respect the general principles of the EU legal order, principle of equality and principle of proportionality *in primis*. In fact, integration conditionality measures must favour social inclusion rather than selecting migrants deserving a chance.

Parole chiave (6):
Integration - Regular Migrants - Competences - Conditionality - Exams - Proportionality

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